

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2826 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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ISHWARBHAI RAMJIBHAI

Versus

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Appearance:

MR YN OZA for Petitioners

Mrs. S.D. Talati, AGP for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 02/09/98

ORAL JUDGEMENT

1. Rule. Mrs. S.D. Talati, learned AGP waives service of rule.

2. Heard at the request of learned counsel.

3. The petitioner challenges the order dated 24.5.1994 of the competent Officer under Urban Land

Ceiling Act (hereinafter called the Act) determining the surplus land held by the petitioner as on the appointed date and the order of the State Government dated 30.10.1996 dismissing the appeal filed by the petitioner. By the aforesaid order, surplus land has been declared and stage upto Section 10(1) has been reached. Further proceedings 20(1)(a) have been stayed because petitioner are utilising land for agriculture purpose and their application for exemption under Section 20(1)(a) is pending for consideration of the State Government. That the application has not so far been decided.

4. The petitioner, without prejudice to his application for exemption, challenges the determination of vacant land held by the petitioner.

5. The short issue raised in this petition is that according to the petitioner he is using the land for agricultural purposes and which was shown in agricultural zone that was recorded in the land record as agricultural land. It is only because subsequent to the commencement of the Act, the area in which the land is situated was declared as development area and Surat Development Authority was constituted for its development under the Gujarat Town Planning and Urban Development Act, 1976. Thereafter a master plan came into existence. In the said master plan which came into effect after the commencement of the Act, the land in question has been shown as falling in the residential zone. It is because of the existence of a master plan declaring the land in question to be falling in residential zone, that the land has been deemed as a vacant land by invoking Explanation 'C' to Section 2(o) of the Act.

5. Learned counsel for the petitioner urges that the competent authority as well as the appellate authority has acted contrary to the law declared by the Supreme court in ATIA MOHAMMADI BEGUM v. STATE OF UP , 1993 SC 2465, wherein the court stated that Explanation 'C' to Section 2(o) would come into play if the land has been specified in the master plan existing as on the date on which holding of land by the person is to be determined, for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the said Explanation 'C' but the provision cannot be invoked if the land is specified in the master plan prepared after the said date. Learned counsel also drew my attention to the communication dated 5.8.89 from the competent authority under the Act pointing out that though it was falling in agricultural zone under the ULC master plan but as the same now falls

in the residential zone in the master plan approved by SUDA, it would fall within the definition of vacant land under the ULC Act.

6. Reading of the two orders makes it abundantly clear that both the authorities have not taken into consideration the aforesaid fact and the law declared by the Supreme Court in that regard. The question will still arise whether it was actually being used for agriculture purposes as per Explanation (A) to Section 2(o) at the commencement.

7. In the circumstances, petition succeeds. The impugned orders are quashed. Competent authority is directed to re-determine the holding of the petitioner under the ULC Act in accordance with law. The State Government is also directed to decide the petitioner's application under Section 20 (1)(a) as expeditiously as possible. Rule is made absolute. There shall be no order as to costs.

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